

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

RICHARD KATZMAN,)	Case No.: 13-CV-00438-LHK
)	
Plaintiff,)	PRETRIAL CONFERENCE ORDER
)	
v.)	
)	
LOS ANGELES COUNTY METROPOLITAN)	
TRANSPORTATION AUTHORITY, a special)	
district,)	
)	
Defendant.)	
)	

Plaintiff Attorneys: G. Whitney Leigh; Lee Hepner
Defense Attorney: Calvin House

A pre-trial conference was held on December 11, 2014. At the pretrial conference, the Court made the following rulings on the record:

TRIAL SCHEDULE: Trial will take place on January 6, 2015; January 9, 2015; and January 12, 2015, from 9 a.m. to 4:30 p.m. with a lunch break from noon to 1 p.m. There will be an approximately 15 minute break at about 10:30 a.m., and approximately 10 minute breaks at about 2:15 p.m. and about 3:30 p.m. each day.

JURORS: The Court will empanel seven jurors. Each side may exercise up to three peremptory challenges.

OPENING STATEMENT/CLOSING ARGUMENT: The parties shall have 30 minutes each for opening statements. The parties shall have 50 minutes each for closing arguments.

EXHIBIT LIST: By December 15, 2014, the parties shall file a joint exhibit list and send the Court via overnight delivery a binder of exhibits.

STIPULATIONS OF FACT: The parties shall file a joint stipulation of facts, including a stipulation regarding the costs of regular postage and certified mail, by December 17, 2014.

JURY INSTRUCTIONS: The parties shall file a joint proposed claims and defenses preliminary jury instruction by December 17, 2014. The Court will file a proposed set of preliminary jury instructions by December 18, 2014. The parties shall file any objections to the proposed preliminary jury instructions by December 19, 2014.

VERDICT FORM: Plaintiff shall file an amended proposed verdict form by December 17, 2014.

SUPPLEMENTAL BRIEFING: The Court ordered supplemental briefing on the following issues:

- Defendant shall file a supplemental response to plaintiff's motion in limine no. 1 by December 15, 2014. Plaintiff shall file a reply to defendant's supplemental response by December 16, 2014.
- Defendant shall file a supplemental response to plaintiff's motion in limine no. 2 by December 15, 2014. Plaintiff shall file a reply to defendant's supplemental response by December 16, 2014.
- Both parties shall file by December 17, 2014 supplemental briefing on whether the parties' Proposed Preliminary Jury Instruction No. 23: (1) should include an instruction regarding adequacy of notice; and (2) whether the relevant risk of erroneous deprivation of a pension is to the plaintiff only, or all pension recipients of the defendant.¹
- Both parties shall file supplemental briefing by December 17, 2014 on which party bears the burden to show the cost of additional procedural safeguards, as described in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

MOTIONS IN LIMINE: For the reasons stated on the record, after reviewing the parties' briefing, considering the parties' oral arguments and the record in this case, and balancing the considerations set forth in Federal Rule of Evidence 403, the Court made the following rulings on the motions in limine:

1. Plaintiff's motion in limine no. 1 is GRANTED as to MTA0033-34, as neither side seeks to introduce this exhibit. The Court reserves ruling on the admissibility of MTA0035-37 until the parties file supplemental briefing, as detailed above.
2. The Court reserves ruling on plaintiff's motion in limine no. 2 until the parties file supplemental briefing, as detailed above.
3. Plaintiff's motion in limine no. 3 is DENIED. Evidence regarding the cost of any additional procedural safeguards is relevant under the three-factor test in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Moreover, the parties indicate they may stipulate to a statement of fact on this issue.

SETTLEMENT UPDATE: The parties shall file a settlement update with the Court by December 19, 2014, at noon. Pursuant to Civil Local Rule 40-1, the parties shall pay for jurors' fees, mileage, and parking if the parties notify the Court of a settlement after noon on December 19, 2014.

¹ See, e.g., *Mathews v. Eldridge*, 424 U.S. 319, 344 (1976) ("[P]rocedural due process rules are shaped by the risk of error inherent in the truthfinding process as applied to the generality of cases, not the rare exceptions."); *Walters v. Nat'l Ass'n of Radiation Survivors*, 473 U.S. 305, 330 (1985) ("[T]he very nature of the due process inquiry indicates that the fundamental fairness of a particular procedure does not turn on the result obtained in any individual case" but "the generality of cases to which [the challenged process] applies.")

IT IS SO ORDERED.

Dated: December 15, 2014

A handwritten signature in black ink that reads "Lucy H. Koh". The signature is written in a cursive, flowing style. The "L" is large and loops around the "u". The "H" is formed by two vertical strokes. The "K" has a large loop at the bottom. The signature is positioned above a horizontal line.

LUCY H. KOH
United States District Judge